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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *November 21, 2017*
BY: *R. Voong* ANALYST

8 BEFORE THE
9 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 800-2015-011200

12 **Muhannad S. Hafi M.D.**
13 **19800 Vallico Parkway**
Unit 343
14 **Cupertino, CA 95014-7107**

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
No. A127064,

16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer
23 Affairs (Board).

24 2. On August 23, 2013, the Medical Board issued Physician's and Surgeon's Certificate
25 Number A127064 to Muhannad S. Hafi M.D. (Respondent). The certificate was in full force and
26 effect at all times relevant to the charges brought herein and will expire on March 31, 2019,
27 unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Code section 2004 provides that the Board shall have the responsibility for the enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

5. Code section 2227 of the Code authorizes the Board to take action against a licensee who has been found guilty under the Medical Practice Act by revoking his or her license, suspending the license for a period not to exceed one year, placing the license on probation and requiring payment of costs of probation monitoring, or taking such other action as the Board deems proper.

6. Code section 2234 states:

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

....

7. Code section 726, subdivision (a), states:

The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division or under any initiative act referred to in this division.

8. Code section 729 states:

(a) Any physician and surgeon, psychotherapist, alcohol and drug abuse counselor or any person holding himself or herself out to be a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the patient or client to an independent and objective physician and surgeon, psychotherapist, or alcohol and drug abuse counselor recommended by a third-party physician and surgeon, psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor.

(b) Sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor is a public offense:

(1) An act in violation of subdivision (a) shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(2) Multiple acts in violation of subdivision (a) with a single victim, when the offender has no prior conviction for sexual exploitation, shall be punishable by imprisonment in a county jail for a period of not more than six months, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(3) An act or acts in violation of subdivision (a) with two or more victims shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of 16 months, two years, or three years, and a fine not exceeding ten thousand dollars (\$10,000); or the act or acts shall be punishable by imprisonment in a county jail for a period of not more than one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

....

For purposes of subdivision (a), in no instance shall consent of the patient or client be a defense. However, physicians and surgeons shall not be guilty of sexual exploitation for touching any intimate part of a patient or client unless the touching is outside the scope of medical examination and treatment, or the touching is done for sexual gratification.

(c) For purposes of this section:

....

(3) "Sexual contact" means sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse.

(4) "Intimate part" and "touching" have the same meanings as defined in Section 243.4 of the Penal Code.

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9. Code section 2246 states:

Any proposed decision or decision issued under this article that contains any finding of fact that the licensee engaged in any act of sexual exploitation, as described in paragraphs (3) to (5), inclusive, of subdivision (b) of Section 729, with a patient shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

10. Code section 2266 states:

The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

11. Penal Code section 243.4, subdivision (e), states that “touches” means “physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim.”

12. Penal Code section 243.4, subdivision (g) states that “intimate part” means “the sexual organ, anus, groin, or buttocks of any person, and the breast of a female.”

Patient P-1

13. In 2012, patient P-1¹ underwent laparoscopic gastric banding surgery to help with weight loss. A Lap-Band adjustable gastric banding system was implanted to restrict food intake by allowing the effective size of her stomach to be adjusted. The Lap-Band requires regular physician visits, approximately every month, for such adjustments to ensure proper quantity of food intake.

14. Respondent was one of several physicians who worked at the medical office where P-1 had her Lap-Band adjusted each month. In early 2014, the Respondent began handling P-1's monthly Lap-Band adjustments.

15. P-1 returned to the Respondent's office on April 19, 2014 for her monthly Lap-Band adjustment. The Respondent examined P-1 alone in an examining room, with no assistant present.

16. The Respondent suggested to P-1 that she consider plastic surgery to remove loose skin resulting from her post-surgery weight loss. The Respondent then looked at her legs and told her that she had nice legs.

¹ Patient names are abbreviated to protect patient privacy. The Respondent will have the opportunity to identify the patient and to obtain the records of the investigation during discovery.

17. The Respondent then asked P-1 to lift up her shirt. P-1 did so and unlatched her bra, exposing her breasts. The Respondent cupped her breasts with both of his hands and lifted them up. The Respondent then began to fondle her breasts. P-1 believed that the Respondent may have been performing a breast exam or an evaluation for plastic surgery. She had never experienced either before.

18. The Respondent told P-1 to lie down on the examination table. She laid on her back. The Respondent continued to fondle her bare breasts and to push them together.

19. The Respondent leaned down toward P-1 and kissed her on the lips.

20. The Respondent then put his ungloved finger in her mouth and rubbed her tongue.

21. The Respondent then grabbed the patient's hand and placed it on his clothed, erect penis. The Respondent moved her hand in a circular motion, rubbing it over his penis.

22. The Respondent then asked P-1 if she was OK before proceeding to adjust her Lap-Band. At the end of the appointment, the Respondent said, "Well, this was nice."

FIRST CAUSE FOR DISCIPLINE

(Sexual Misconduct and Exploitation: Patient P-1)

23. The Respondent's touching and fondling of his patient's breasts was not performed for a legitimate medical purpose but rather for the Respondent's sexual arousal and gratification. The Respondent's conduct constitutes unprofessional conduct; an extreme departure from the standard of care and gross negligence, in violation of Code section 2234(b); sexual misconduct, in violation of section 726; and sexual exploitation, in violation of section 729.

24. The Respondent's kissing of his patient on her lips constitutes unprofessional conduct; an extreme departure from the standard of care and gross negligence, in violation of Code section 2234(b) (gross negligence); and sexual misconduct, in violation of section 726.

25. The Respondent's putting his ungloved finger in his patient's mouth constitutes unprofessional conduct; a departure from the standard of care and negligence, in violation of section 2234(c); and sexual misconduct, in violation of section 726.

26. The Respondent's placement of his patient's hand on his clothed, erect penis and his movement of her hand over his penis was not performed for a legitimate medical purpose but

1 rather for the Respondent's sexual arousal and gratification. The Respondent's conduct
2 constitutes unprofessional conduct; an extreme departure from the standard of care and gross
3 negligence, in violation of Code section 2234(b); sexual misconduct, in violation of section 726;
4 and sexual exploitation, in violation of section 729.

5 27. The Respondent's failure to document his alleged examination of his patient's breasts
6 and mouth constitutes unprofessional conduct; a departure from the standard of care and
7 negligence, in violation of Code section 2234(c); and inadequate recordkeeping, in violation of
8 section 2266.

9 **Patient P-2**

10 28. Patient P-2 was referred to a medical clinic by her prospective employer for a pre-
11 employment medical examination. On August 18, 2016, P-2 reported to the clinic for her
12 examination appointment. The Respondent conducted the examination.

13 29. After entering the examination room, the Respondent told P-2 that she "looked good."
14 The Respondent approached P-2, who was sitting on the examination table, and stood very close
15 to her. The Respondent then moved even closer to P-2 and pressed his erect penis into P-2's leg.
16 P-2 pushed the Respondent away and told him to get back.

17 30. Later in the examination, the Respondent again stood very close to P-2 and pressed
18 his erect penis into P-2's leg. P-2 pulled away from the Respondent.

19 31. After the Respondent completed his examination, P-2 went to the front desk and
20 began to cry as she told the clinic's staff what the Respondent had done to her. A staff person
21 took P-2 to an office room and arranged for the clinic's operations director to meet with her there.

22 32. While P-2 was waiting alone in the office room, the Respondent entered the room and
23 told P-2, "I'm sorry."

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33. The Respondent's pressing of his clothed, erect penis into the leg of his patient was not performed for a legitimate medical purpose but rather for the Respondent's sexual arousal and gratification. The Respondent's conduct constitutes unprofessional conduct; an extreme departure from the standard of care and gross negligence, in violation of Code section 2234(b); sexual misconduct, in violation of section 726; and sexual exploitation, in violation of section 729.

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A127064, issued to Muhannad S. Hafi M.D.;
2. Revoking, suspending, or denying approval of Muhannad S. Hafi M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Muhannad S. Hafi M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

Kimberly Kirchmeyer
KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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